

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK ROSS,

Plaintiff,

-against-

NICOLE ROBINSON, LAWYER; HILLARY  
CLINTON, GOVERNMENT OFFICIAL; DONALD  
TRUMP, PRESIDENT; SALLINO BARNS,  
LAWYER,

Defendants.

19-CV-6204 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated in Marcy Correctional Facility, brings this *pro se* action, alleging that Defendants violated his constitutional rights. By order dated August 5, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.<sup>1</sup> For the reasons set forth below, the Court dismisses the complaint.

**STANDARD OF REVIEW**

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,”

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

*Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that “a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston*, 141 F.3d at 437 (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

## **BACKGROUND**

Plaintiff Mark Ross drafted this complaint using the prisoner complaint form provided by this Court. In addition to checking the box on the form to indicate “[v]iolation of [his] federal constitutional rights” as the legal basis for his claim, he also checks the box on the form to indicate “[o]ther,” and he writes “OMH Confadentalaliy [sic] breach constatution [sic] right breach goverment [sic] identification breach.” (Compl. at 2.)

Plaintiff lists the place of occurrence as “gang asalt [sic] gang rape vilation [sic] of constitution rights,” and the date of occurrence as “1/20/2012 4/4/2016 6/5/2014 prison city state.” (*Id.* at 4.)

Plaintiff alleges the following:

I was slash on lef side of face 25 stiches 4/4/16 I was a victum of a crime in 2012 cut from behind hundred fifty stiches & six stapels two the back of the head I suffered. I was gang rape on March 6<sup>th</sup> 2018 by Drake Clinton Tyshon Brown Shay Bell Sallino Barns Time St Crown Kevin Ross Brandan Ross Donald Trump & Quomo. I had a law suit in for city state & federal sence 2016 on gang asalt & Nicole Robinson who was my lawyer gave away my settalment check to Mack Baller gang wich is a Breach of the contract that was siend by Mark Ross in front of Nicole Robinson who descize her self as Amy Robinson two Mark Ross & had sexual intacorse with Mark Ross lital brother Brandon & had a son by

Brandn Ross & name him Mark Quarder Ross & Nicole Robinson gave away some of my money two Brandon & I never received my computation. I am trimatize eamotional deastrest hurt is broken & heart fisacly eamotionaly & spirataly. I seek money computation lasic sergery reconstroction & all of the correctional staff are geting down with the Mack baller's & are takeing money out of people acount for the self & for larry contanetal & that is how the linton exscape hapen with the inmates getting out of jail & angalina lopez who drest up as a parole officer got Me Mark Ross to vilate my parole to try & kill Mark Ross in prison wich angalina lopez is known as Cardie B wich she is a Mucines that is causeing me pain & suffering. Also have a maxium expiration date of my parole finshis on January 21<sup>st</sup> 2021 and I am fairing that I will not be realest by the state because this Cardie Bee bitch that is descize as a mental health nurst.

(*Id.* at 4.)

In the section in which Plaintiff is asked to state the relief he seeks, he states “Quonity of weed sent two Mark Geoviny Royalty Ross in prison package[,] 300.000 doller loan sent to Mark Geoviny Royalty Ross inmate acount with free t.v. & lasic sergery with reconstruction & a girl friend two come & see Mark Ross. Please & thank you.” (*Id.* at 5.)

### DISCUSSION

Even when read with the “special solicitude” due *pro se* pleadings, *Triestman*, 470 F.3d at 474-75, Plaintiff’s claims rise to the level of the irrational, and there is no legal theory on which he can rely. *See Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437. The Court therefore dismisses this action as frivolous. 28 U.S.C. § 1915(e)(2)(B)(i).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

## CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket.

Plaintiff's complaint is dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 19, 2019  
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON  
Chief United States District Judge